IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8202 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KALUPUR MANSURI(PINJARA) JAMAT CO-OP HOUSING SOC. LTD

Versus

STATE OF GUJARAT & ORS

Appearance:

MR MI HAVA for Petitioner

MR. D.N. PATEL, ASST. GOVT. PLEADER for Respondent No. 1

MR P. UPADHYAY for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/10/96

ORAL JUDGEMENT

The petitioner, by this petition, calls in question the order dated 21.5.1992, passed by the Joint Secretary, Revenue Department, exercising powers under Section 34 of the Urban Land Ceiling Act (for short "the Act") declaring 3743.64 sq. mtrs. of land in excess of

the ceiling limit.

2. The petitioner is a registered Co-operative Housing Society. It was registered on 9.10.1990 with the Assistant Registrar of Co-operative Societies, Ahmedabad. There are 93 members of the petitioner society and they all belong to the lower middle class and also economically backward class of the society. The members of the society wanted to construct their residential premises and therefore they purchased a land bearing survey No. 198 situated within the local limits of village Makraba in Ahmedabad Taluka. The land was then got converted into non-agricultural land. An order thereof was passed on 31.7.1959. The Plans of the residential premises were then prepared and submitted to the Makraba Gram Panchayat. The panchayat on 30.5.1974 passed the plan submitted, and shortly thereafter the construction of about 93 dwelling units commenced. At present the same is over and the members of the society are using and occupying their respective dwelling units.

3. Formerly the land belonged to respondents Nos. 2 and 3. The total area of survey No. 198 was at that time 12343 sq. mtrs; but later on the D.I.L.R.after further survey found that it was the land admeasuring 12141 sq. mtrs. and not 12343 sq. mtrs. On 24.1.1989, the Competent Authority, Ahmedabad, held that respondents Nos. 2 and 3 were not holding the land in excess of the ceiling limit because the Competent Authority during enquiry over and other factors could note that there was construction on the land upto plinth level and when the area covered by the construction was excluded, the land was not in excess of the ceiling limit. Thereafter, the registered sale deed was executed on 29.6.1990 and the Society came to be registered on 9.10.1990. The Secretary, Revenue Department, invoking section 34 of the Act on 18.5.1991 issued a notice against respondent No. 3, a copy of which is at Annexure-F, calling upon them to explain why the order of the Competent Authority be not upset; and held that they were holding the land in excess of the ceiling limit. The respondents Nos. 2 and 3 who had by that time already parted with the possession executing sale deed in favour of the Society did not take care to appear and resist the notice. As no one appeared, the Secretary on 21.5.1992 passed the order declaring that the respondents Nos. 2 and 3 were holding 3743.64 sq. mtrs. in excess of the ceiling limit. He therefore directed the Competent Authority to take further action in the matter. The legality and propriety of that order is challenged in this petition.

4. It has been contended on behalf of the petitioner that the Secretary, Revenue Department, ought to have borne in mind the construction of 93 dwelling units in the land. He ought to have also excluded the appurtenant land and additional land area from his computation. As his computation is erroneous, the impugned order is required to be set aside.

5. The Competent Authority during his enquiry considered several relevant aspects and has dealt with the same in his order dated. 24.1.1989 and has rightly held that the petitioner does not hold the land in excess of limit. I entirely agree with the reasonings of the Competent Authority being consistent with law. When I am in general agreement with him, it is not necessary to restate elaborately of those reasonings, but about the computation, I will state in details how the Secretary exercising power under Section 34 of the Act has fallen into error. In all certain areas of land are required to be excluded while computing the area for the purpose of limits fixed. In view of the decision of the apex court in the case of MEERA GUPTA VS. STATE OF W.B; AIR 1992 SC 1567 the area of the land covered by the construction of a house or building has to be excluded; but of course of that building constructed prior to February 17th 1976. The plinth level construction upto 17.2.1976 is also to be taken into account. According to the Competent Authority there were 81 units constructed upto the plinth level. The total area covered by such construction was found to be of 3138.38 sq. mtrs. At that time one tenement was also found to have been fully constructed covering the area of 73.23 sq. mtrs. In all, therefore, the total area of land covered by the construction was of 3211.61 sq. mtrs., but it seems that the Competent Authority has rightly excluded the area of 72.23 sq. mtr. of land covered by one tenement found to have been fully constructed after the cut off date, namely, 17.2.1976. Hence the total area covered by the constructed portion comes to 3138.38 sq. mtrs. Over and above such construction there was also the construction of a pump room and latrine covering the area of 140 sq. mtrs. If that is added to the above area, the total of the area to be kept out of computation comes to 3278.38 sq. mtrs.

6. The land on which no construction is permissible, the area of which is also required to be excluded. As per the Act, 60 per cent of the total area of the land is required to be kept open around the constructed portion because of the building Rules applicable, as on such land no construction is permissible. Hence 60 per cent of the

total area of 12141 sq. mtrs. would come to 7284.60 sq. mtrs. Over and above such exclusion, 500 sq. mtrs. of land for each of the dwelling unit has to be excluded as additional appurtenant land which comes to 40500 sq. mtrs., but petitioner says the same may be treated 22500 sq. mtrs., as common plot land is kept open. It therefore, follows that in all, the area of land to be excluded from computation comes to 33062 sq. mtrs. Thus, the area to be excluded for computation is more than the total area of the land viz. 12141 sq. mtrs. In fact, therefore, there is no land in excess of the ceiling limit. However, the Secretary, Revenue Department, erroneously computed. Instead of granting exclusion of 3138.38 sq. mtr. of land covered by construction, he excluded 2144 sq. mtrs. of land. Under the head, additional appurtenant land and appurtenant land on which construction is not permitted, he excluded 4716 sq. mtrs; and under the head addl. appurtenant land, he considered only 500 sq. mtrs. of land; and thus in all he excluded 8360 sq. mtrs. of land which is, as discussed hereinabove, inconsistent with law; and erroneous.

7. It may be stated that even more area of land is required to be excluded. The land belonged to respondents Nos. 2 and 3, and they constituted two units under the Act. Each of them was also entitled to further exemption of 2000 sq. mtrs. of land, in all 4000 sq. mtrs. This aspect has been lost the sight of the Secretary. It is pertinent to note that as per the building Rules of the local body applicable it is imperative upon the society to have a common plot, which in this case is admeasuring 1570 sq. yards i.e. 1312. 72 sq. mtrs. The same has to be kept out of consideration. For the exclusion of such area, no area of the land in view of above discussion remain on hand. In the result what is clear is that the respondents Nos. 2 and 3, and then the petitoners were having no land in excess of the ceiling limits.

8. Thus, leaving no doubt it can be said that the Secretary has fallen into error in holding that the respondent Nos. 2 and 3 were holding land of 3743.64 sq. mtrs. in excess of the ceiling limit. It may also be noted that without assigning any reason, the Secretary reached the conclusion simply mentioning that as no one appeared before him in this appeal, and therefore he accepted what has been stated in the show cause notice dated 18.5.1991; but he has not taken pains stating reasons as to how the land admeasuring 3743.64 sq. mtrs. was in excess of the ceiling limit. His conclusion,

without assigning any reason and in view of the above discussion, being perverse, erroneous, and inconsistent with law, requires to be struck down.

9. For the foregoing, the petition is allowed. The order of the Secretary dated 21.5.1992, the copy of which is produced at annexure-G, declaring the land of 3743.64 in excess of the ceiling limit is hereby quashed and set aside, and the order of the Competent Authority dated 24.1.1989 is restored; and it is hereby declared that the petitioners are holding no land in excess of ceiling limit. The copy of the plan produced be taken on record. No costs in the circumstances of the case. Rule is made absolute to the above extent.

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